

REMARKS

This is in response to the office action dated September 9, 2004.

An information disclosure statement disclosing U.S. Patent No. 2,615,660 and the required fee are submitted herewith. Please note that the '660 patent discloses gripping jaws having serrations.

Claim 27 was rejected under 35 U.S.C. 102(b) as being anticipated by US4825586 (herein the '586). Claim 27 has been amended so as to avoid the '586 reference. Reconsideration of claim 27 is requested.

Claims 1-26, 28 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over the '586 patent in view of the patent application EP 1364604 A1. First, it does not appear that the EP 1364604A1 reference is available under section 35 U.S.C. 102 as prior art since it was published November 26, 2003 after the filing of the instant application. Reconsideration of the propriety of use of the '604 reference is respectfully requested. If the Primary Examiner still considers the reference to be useable, applicants would appreciate identification of the statutory section/ MPEP section under which the reference is to be considered as prior art. The undersigned has reviewed section 102 and the MPEP and it does not appear that the '604 reference is proper.

Next, it doesn't make any sense to combine the references as they each lack the required suggestion or motivation to combine. It is hereby submitted that neither the '586 nor the '604 reference suggests or provides motivation to combine. The '586 patent is directed to a Christmas Tree Stand and the '604 patent application is directed toward a

motor driven machine tool chuck which has a spiral nut which drives the chuck members inwardly. There is nothing in the '586 patent which would suggest using a spiral nut drive. Nor is there anything in the '604 patent application which would suggest using arcuate clamping plates. Why would someone working in the Christmas Tree Stand art look to a patent which ostensibly applies to a spiral driven machine tool chuck?

Additionally, it appears that the '604 reference teaches a machine tool chuck which simultaneously closes each element of the chuck and this simply would not work for Christmas trees because they do not have cylindrical profiles, instead Christmas trees have all sorts of abnormalities which require individual adjustments of each support position. If the Christmas tree is not cylindrical in the vicinity of the machine tool chuck then it would not work properly and a gap would exist between a portion of the chuck and the tree at least one support position resulting in an unstable tree.

Further, if anything, the '586 patent teaches away from the teaching of the present application in that it discloses arcuate grips to essentially approximate a cup or cylinder surrounding the tree.

Therefore, it is respectfully suggested that the rejection under section 103 is not proper.

At the time of filing the instant application, the '604 reference was not yet published and therefore it was impossible to combine the teachings of the '604 reference with the teachings of the '586 patent.

The Primary Examiner is correct in his observations that the '586 patent is silent in

regard to serrations, the bore being offset and the female threads in the circumferential support. The serrations and protrusions are claimed in the instant application and enable gripping of the wood of the tree. The offset bore is also claimed and better enables securement of the tree against the bending moment caused by a top heavy, unbalanced tree. It is believed that the Examiner's statement to the effect that the trunk of the tree in the instant application is gripped at a higher area along the truck is incorrect. In fact, the offset bore enables the trunk of the tree to be gripped at a lower area. A stand having female threads is also desirable and it does not appear that the '586 reference has that structure. However, it does appear that the '586 patent does have at least one thread in its frame or else it would not function. It is believed that the comments made by the Primary Examiner were directed to the smooth holes in the magnet and they should not have been because that is not the location of the claimed female threads.

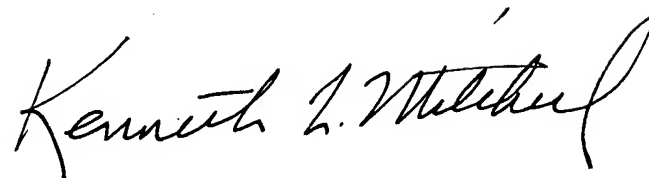
Applicants have disclosed and claimed many different orientations and shapes of the serrations and protrusions and it is hereby submitted that they were not obvious at the time the invention was made. There is no basis for such a conclusion in the record and the '604 reference apparently illustrating horizontal serrations for gripping a machine tool bit does not provide the basis for pyramid shaped protrusions (for example).

Please correct the spelling of the residence address of the inventor to Leavittsburg spelled with two "t's".

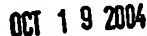
Applicant respectfully requests reconsideration.

Respectfully submitted,

Woodling, Krost and Rust

A handwritten signature in black ink, reading "Kenneth L. Mitchell". The signature is written in a cursive style with a large, sweeping "K" and a long, horizontal flourish at the end.

Kenneth L. Mitchell, 36,873
440-256-4150



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Complete if Known

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First Named Inventor	ROBERT A. KOVACH
Art Unit	
Examiner Name	
Attorney Docket Number	8190

Sheet	1	of	1
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Examiner
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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